

AMENDED IN ASSEMBLY MAY 4, 2009

CALIFORNIA LEGISLATURE—2009—10 REGULAR SESSION

ASSEMBLY BILL

No. 904

Introduced by Assembly Member V. Manuel Perez

February 26, 2009

An act to amend Section 51298 of the Government Code, relating to local government finance.

LEGISLATIVE COUNSEL'S DIGEST

AB 904, as amended, V. Manuel Perez. Local capital investment incentives: qualified manufacturing facilities.

Existing law authorizes a city, county, or city and county to pay capital investment incentive amounts to a requesting proponent of a qualified manufacturing facility. A "qualified manufacturing facility" is defined for these purposes to include a facility operated by a business described in specified provisions of the Standard Industrial Classification Manual published by the United States Office of Management and Budget, and a facility operated by a business engaged in the recovery of minerals from geothermal resources.

This bill would ~~additionally~~ include within ~~this~~ *the* definition of a "qualified manufacturing facility" a facility operated by a business engaged in the ~~commercial manufacturing of parts or components related to the~~ production of electricity using solar, wind, biomass, hydropower, or geothermal resources on or after July 1, 2010. *This bill would also delete the references to the Technology, Trade, and Commerce Agency and impose its duties under these provisions on the Business, Transportation and Housing Agency.*

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

SECTION 1. Section 51298 of the Government Code is amended to read:

51298. It is the intent of the Legislature in enacting this chapter to provide local governments with opportunities to attract large manufacturing facilities to invest in their communities and to encourage industries, such as high technology, aerospace, automotive, biotechnology, software, environmental sources, and others, to locate and invest in those facilities in California.

(a) Commencing in the 1998–99 fiscal year, the governing body of a county, city and county, or city, may, by means of an ordinance or resolution approved by a majority of its entire membership, elect to establish a capital investment incentive program. In any county, city and county, or city in which the governing body has so elected, the county, city and county, or city shall, upon the approval by a majority of the entire membership of its governing body of a written request therefor, pay a capital investment incentive amount to the proponent of a qualified manufacturing facility for up to 15 consecutive fiscal years. A request for the payment of capital investment incentive amounts shall be filed by a proponent in writing with the governing body of an electing county, city and county, or city in the time and manner specified in procedures adopted by that governing body. In the case in which the governing body of an electing county, city and county, or city approves a request for the payment of capital investment incentive amounts, both of the following conditions shall apply:

(1) The consecutive fiscal years during which a capital investment incentive amount is to be paid shall commence with the first fiscal year commencing after the date upon which the qualified manufacturing facility is certified for occupancy or, if no certification is issued, the first fiscal year commencing after the date upon which the qualified manufacturing facility commences operation.

(2) In accordance with paragraph (4) of subdivision (d), the annual payment to a proponent of each capital investment incentive amount shall be contingent upon the proponent's payment of a community services fee.

(b) For purposes of this section:

1 (1) “Qualified manufacturing facility” means a proposed
2 manufacturing facility that meets all of the following criteria:

3 (A) The proponent’s initial investment in that facility, in real
4 and personal property, necessary for the full and normal operation
5 of that facility, made pursuant to the capital investment incentive
6 program, that comprises any portion of that facility or has its situs
7 at that facility, exceeds one hundred fifty million dollars
8 (\$150,000,000). Compliance with this subparagraph shall be
9 certified by the ~~Technology, Trade, and Commerce~~ *Business,*
10 *Transportation and Housing* Agency upon the agency’s approval
11 of a proponent’s application for certification of a qualified
12 manufacturing facility. An application for certification shall be
13 submitted by a proponent to the agency in writing in the time and
14 manner as specified by the agency.

15 (B) The facility is to be located within the jurisdiction of the
16 electing county, city and county, or city to which the request is
17 made for payment of capital investment incentive amounts.

18 (C) The facility is operated by any of the following:

19 (i) A business described in Codes 3500 to 3899, inclusive, of
20 the Standard Industrial Classification (SIC) Manual published by
21 the United States Office of Management and Budget, 1987 edition,
22 except that “January 1, 1997,” shall be substituted for “January 1,
23 1994,” in each place in which it appears.

24 (ii) A business engaged in the recovery of minerals from
25 geothermal resources, including the proportional amount of a
26 geothermal electric generating plant that is integral to the recovery
27 process by providing electricity for it.

28 (iii) A business engaged in the ~~commercial~~ *manufacturing of*
29 *parts or components related to the* production of electricity using
30 solar, wind, biomass, hydropower, or geothermal resources on or
31 after July 1, 2010.

32 (D) The proponent is either currently engaged in commercial
33 production or engaged in the perfection of the manufacturing
34 process, or the perfection of a product intended to be manufactured.

35 (2) “Proponent” means a party or parties that meet all of the
36 following criteria:

37 (A) The party is named in the application to the county, city
38 and county, or city within which the qualified manufacturing
39 facility would be located for a permit to construct a qualified
40 manufacturing facility.

1 (B) The party will be the fee owner of the qualified
2 manufacturing facility upon the completion of that facility.
3 Notwithstanding the previous sentence, the party may enter into
4 a sale-leaseback transaction and nevertheless be considered the
5 proponent.

6 (C) If a proponent that is receiving capital investment incentive
7 amounts subsequently leases the subject qualified manufacturing
8 facility to another party, the lease may provide for the payment to
9 that lessee of any portion of a capital investment incentive amount.
10 Any lessee receiving any portion of a capital investment incentive
11 amount shall also be considered a proponent for the purposes of
12 subdivision (d).

13 (3) “Capital investment incentive amount” means, with respect
14 to a qualified manufacturing facility for a relevant fiscal year, an
15 amount up to or equal to the amount of ad valorem property tax
16 revenue derived by the participating local agency from the taxation
17 of that portion of the total assessed value of that real and personal
18 property described in subparagraph (A) of paragraph (1) that is in
19 excess of one hundred fifty million dollars (\$150,000,000).

20 (4) “Manufacturing” means the activity of converting or
21 conditioning property by changing the form, composition, quality,
22 or character of the property for ultimate sale at retail or use in the
23 manufacturing of a product to be ultimately sold at retail.
24 Manufacturing includes any improvements to tangible personal
25 property that result in a greater service life or greater functionality
26 than that of the original property.

27 (c) A city, special district, or school district may, upon the
28 approval by a majority of the entire membership of its governing
29 body, pay to the county, city and county, or city an amount equal
30 to the amount of ad valorem property tax revenue allocated to that
31 city, special district, or school district, but not the actual allocation,
32 derived from the taxation of that portion of the total assessed value
33 of that real and personal property described in subparagraph (A)
34 of paragraph (1) of subdivision (b) that is in excess of one hundred
35 fifty million dollars (\$150,000,000).

36 (d) A proponent whose request for the payment of capital
37 investment incentive amounts is approved by an electing county,
38 city and county, or city shall enter into a community services
39 agreement with that county, city and county, or city that includes,
40 but is not limited to, all of the following provisions:

1 (1) A provision requiring that a community services fee be
2 remitted by the proponent to the county, city and county, or city,
3 in each fiscal year subject to the agreement, in an amount that is
4 equal to 25 percent of the capital investment incentive amount
5 calculated for that proponent for that fiscal year, except that in no
6 fiscal year shall the amount of the community services fee exceed
7 two million dollars (\$2,000,000).

8 (2) A provision specifying the dates in each relevant fiscal year
9 upon which payment of the community services fee is due and
10 delinquent, and the rate of interest to be charged to a proponent
11 for any delinquent portion of the community services fee amount.

12 (3) A provision specifying the procedures and rules for the
13 determination of underpayments or overpayments of a community
14 services fee, for the appeal of determinations of any underpayment,
15 and for the refunding or crediting of any overpayment.

16 (4) A provision specifying that a proponent is ineligible to
17 receive a capital investment incentive amount if that proponent is
18 currently delinquent in the payment of any portion of a community
19 services fee amount, if the qualified manufacturing facility is
20 constructed in a manner materially different from the facility as
21 described in building permit application materials, or if the facility
22 is no longer operated as a qualified manufacturing facility meeting
23 the requirements of paragraph (1) of subdivision (b). If a proponent
24 becomes ineligible to receive a capital investment incentive amount
25 as a result of an agreement provision included pursuant to this
26 subparagraph, the running of the number of consecutive fiscal
27 years specified in an agreement made pursuant to subdivision (a)
28 is not tolled during the period in which the proponent is ineligible.

29 (5) A provision that sets forth a job creation plan with respect
30 to the relevant qualified manufacturing facility. The plan shall
31 specify the number of jobs to be created by that facility, and the
32 types of jobs and compensation ranges to be created thereby. The
33 plan shall also specify that for the entire term of the community
34 services agreement, both of the following shall apply:

35 (A) All of the employees working at the qualified manufacturing
36 facility shall be covered by an employer-sponsored health benefits
37 plan.

38 (B) The average weekly wage, exclusive of overtime, paid to
39 all of the employees working at the qualified manufacturing

1 facility, who are not management or supervisory employees, shall
2 be not less than the state average weekly wage.

3 For the purpose of this subdivision, “state average weekly wage”
4 means the average weekly wage paid by employers to employees
5 covered by unemployment insurance, as reported to the
6 Employment Development Department for the four calendar
7 quarters ending June 30 of the preceding calendar year.

8 (6) (A) In the case in which the proponent fails to operate the
9 qualified manufacturing facility as required by the community
10 services agreement, a provision that requires the recapture of any
11 portion of any capital investment incentive amounts previously
12 paid to the proponent equal to the lesser of the following:

13 (i) All of the capital investment incentive amounts paid to the
14 proponent, less all of the community services fees received from
15 the proponent, and less any capital investment incentive amounts
16 previously recaptured.

17 (ii) The last capital investment incentive amount paid to the
18 proponent, less the last community services fee received from the
19 proponent, multiplied by 40 percent of the number of years
20 remaining in the community services agreement, but not to exceed
21 10 years, and less any capital investment incentive amounts
22 previously recaptured.

23 (B) If the proponent fails to operate the qualified manufacturing
24 facility as required by the community services agreement, the
25 county, city and county, or city may, upon a finding that good
26 cause exists, waive any portion of the recapture of any capital
27 investment incentive amount due under this subdivision. For the
28 purpose of this subdivision, good cause includes, but is not limited
29 to, the following:

30 (i) The proponent has sold or leased the property to a person
31 who has entered into an agreement with the county, city and
32 county, or city to assume all of the responsibilities of the proponent
33 under the community services agreement.

34 (ii) The qualified manufacturing facility has been rendered
35 inoperable and beyond repair as a result of an act of God.

36 (C) For purposes of this subdivision, failure to operate a
37 qualified manufacturing facility as required by the community
38 services agreement includes, but is not limited to, failure to
39 establish the number of jobs specified in the jobs creation plan
40 created pursuant to paragraph (5).

1 (e) (1) Each county, city and county, or city that elects to
2 establish a capital investment incentive program shall notify the
3 ~~Technology, Trade, and Commerce~~ *Business, Transportation and*
4 *Housing* Agency of its election to do so no later than June 30th of
5 the fiscal year in which the election was made.

6 (2) In addition to the information required to be reported
7 pursuant to paragraph (1), each county, city and county, or city
8 that has elected to establish a capital investment incentive program
9 shall notify the ~~Technology, Trade, and Commerce~~ *Business,*
10 *Transportation and Housing* Agency each fiscal year no later than
11 June 30th of the amount of any capital investment incentive
12 payments made and the proponent of the qualified manufacturing
13 facility to whom the payments were made during that fiscal year.

14 (3) The ~~Technology, Trade, and Commerce~~ *Business,*
15 *Transportation and Housing* Agency shall compile the information
16 submitted by each county, city and county, and city pursuant to
17 paragraphs (1) and (2) and submit a report to the Legislature
18 containing this information no later than October 1, every two
19 years commencing October 1, 2000.